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Attorneys for Plaintiff
 UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 05-00261 HG
)	
Plaintiff,	)	UNITED STATES' OPPOSITION TO
	)	DEFENDANT TROIANO'S MOTION TO
vs.	)	EXCLUDE EVIDENCE RELATING TO
	)	THE PREDICATE FELONY OFFENSE
JAMES TROIANO,	(01)	FOR COUNT IV - FELON IN
also known as:	)	POSSESSION OF FIREARM;
"JOHN KLATT,"	)	CERTIFICATE OF SERVICE
WENDELL K. TOKI,	(02)	
Defendants.	)	Hearing: March 23, 2006
	)	Time: 8:30 AM
	)	Judge: Helen Gillmor
)	

**UNITED STATES' OPPOSITION TO
 DEFENDANT TROIANO'S MOTION TO EXCLUDE EVIDENCE
 RELATING TO THE PREDICATE FELONY OFFENSE FOR COUNT IV-FELON IN
POSSESSION OF FIREARM**

COMES NOW the United States of America, by and through
 its attorneys, Edward H. Kubo, Jr., United States Attorney for
 the District of Hawaii, Wes R. Porter and Clare E. Connors,

Assistant United States Attorneys, and hereby submits its opposition to Defendant JAMES TROIANO's ("TROIANO") Motion to Exclude Evidence Relating to the Predicate Felony Offense for Count IV - Felon in Possession of Firearm, filed February 23, 2006.

The United States prepared a draft stipulation for the defendant's review, which it mailed on February 27, 2006. TROIANO's defense counsel acknowledged receipt, however, the Motion in Limine is still pending with this Court.

The United States has the burden of proving beyond a reasonable doubt: (1) that the defendant has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year; (2) that the defendant knowingly possessed the firearm described in the Superseding Indictment; and (3) that such possession was in or affecting interstate commerce or foreign commerce. Thus, to satisfy its burden as to an element of the crime, the United States must introduce evidence of a prior felony. The holding in Old Chief v. United States, 519 U.S. 172, 183 (1997), affirms the United States' basis for seeking to admit evidence of a prior conviction for this purpose.

In any event, the United States does not object to fashioning a stipulation to the predicate felony offense in Count 4 and has sought to agree to such a stipulation with the defense.

For the foregoing reasons, TROIANO's motion to exclude evidence related to the predicate felony must be DENIED.

DATED: March 13, 2006, at Honolulu, Hawaii.

Respectfully submitted,

EDWARD H. KUBO, JR.
United States Attorney
District of Hawaii

By /s/ Clare E. Connors
WES R. PORTER
CLARE E. CONNORS
Assistant U.S. Attorneys

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document was served on March 15, 2006, to the following person(s) :

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WENDELL R. TOKI

DATED: March 15, 2006, at Honolulu, Hawaii.

/s/ Cheri Abing